

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT P. LOCKYER,
Plaintiff,
vs.
AXA COMPANIES, *et al.*,
Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND
MEMORANDUM DECISION**

Case No. 2:10-cv-678 CW

Judge Clark Waddoups
Magistrate Judge Brooke C. Wells

This case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Brooke C. Wells under 28 U.S.C. § 636(b)(1)(B). On October 12, 2010, the Magistrate Judge issued a Report and Recommendation, making recommendations about how to rule upon various dispositive motions. Plaintiff Robert P. Lockyer filed an objection to the entire Report and Recommendation on October 19, 2010.

The court reviewed the file in this action *de novo* and has considered Mr. Lockyer's objections to the R & R. Even giving all of Mr. Lockyers' pleadings a liberal construction, the court finds them to be without merit. Moreover, the R & R is correct in all material respects, both in its factual findings and conclusions of law. The court therefore APPROVES AND ADOPTS the R & R, with one clarification.

The point of clarification is that the R & R states that because some Defendants moved to dismiss, default against any Defendant was inappropriate. (*See* R & R at 6.) This statement is overly broad if considered out of context because in many cases, dismissing some defendants will not necessarily result in dismissing the entire action. However, in the context of this case,

this statement is correct. As the R & R correctly concluded, each of Mr. Lockyer's asserted claims fail as a matter of law. Thus, while some Defendants have not moved to dismiss and Mr. Locker argues that some Defendants are in default, judgment against any one of the Defendants would not be warranted because the complaint does not state any cognizable claim.

Accordingly, the court ORDERS as follows:

Mr. Lockyer's motion to appoint counsel (Dkt. No. 5) is DENIED as moot; the moving Defendants' motions to dismiss (Dkt. Nos. 8 and 10) are GRANTED; and Mr. Locker's motion for default judgment (Dkt. No. 12) is DENIED as moot.

DATED this 5th day of November, 2010.

BY THE COURT:



Clark Waddoups
United States District Judge